

## Bill C-223 and parental alienation: Trust the judges, not the politicians

By **Nicholas Bala and Rachel Birnbaum**

Law360 Canada (October 28, 2025, 12:44 PM EDT) -- Bill C-223, recently introduced as a private member's bill by backbench Liberal MP Lisa Hepfner, would substantially amend the parenting provisions of the *Divorce Act*, and in our view harm the interests of children and parents.

Although the preamble states that the objective of the bill is to better protect women and children from family violence, its primary objective is to prevent judges from even considering parental alienation or responding to cases where a parent is emotionally harming a child by deliberately undermining the child's relationship with the other parent or making false allegations of abuse. The bill is in part modelled on legislation enacted in a few American states, known as Kayden's Law, which restricts judicial authority to address parental alienation, but Bill C-223 is a much more radical response than laws enacted in other jurisdictions.

The National Association of Women and the Law (NAWL) has strongly supported Bill C-223, arguing that "parental alienation" is a "pseudo-concept" that should not be used in family courts, citing feminist legal scholars who dismiss parental alienation as "junk science." Some of the key provisions of Bill C-223 would:

- Prevent consideration of evidence that a parent manipulated, persuaded or encouraged a child to become estranged from the other parent;
- Prevent consideration of the fact that child protection services or police investigated a parent's allegations of violence and considered them unfounded;
- Prevent orders that restrict parenting time with one parent to whom the child is bonded in order to improve the child's relationship with the other parent; and
- Prevent courts from requiring a child to attend "reunification therapy."



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While Bill C-223 prohibits admission of evidence of parental alienation, there is a substantial amount of social science research that establishes that it is a valid and useful concept. Although there is not a reliable psychological test to determine whether a child has been "alienated," this is also true of many concepts used by the family courts. "Coercive control" is an important concept used to explain the behaviour of victims of family violence and is now in the *Divorce Act*, but like alienation, its presence in any case may be contested and must be determined after careful, individualized fact finding, often involving expert evidence, rather than by application of a reliable, validated psychological test.

While alienation is an important concept, not all claims of parental alienation are valid. Indeed, our study of Ontario cases found that an allegation of parental alienation is proven in family court in less than half the cases where it is made. Significantly, however, in more than a third of cases where the courts find alienation, it is the mother who has been alienated from her children, often by an abusive husband, requiring a court order to allow her to re-establish a relationship with her children. Bill C-223 ignores the plight of these women and their children.

There is a large body of research establishing that children who experience parental alienation suffer psychological harm. Particularly in more serious cases, the parenting capacity of those who alienate their children is often compromised. The making of unfounded allegations of abuse or violence against the other parent may be symptomatic of serious emotional problems and raises concerns about the capacity to be a child-focused parent. Canadian courts have recognized that evidence of parental alienation is significant (see *A.M. v. C.H.*, 2019 ONCA 764), and in more severe cases the promotion of the best interests may require removing the child from the care of the alienating parent and placing the child with a parent whom the child may have rejected.

A significant portion of the cases involving children resisting contact with a parent involve conflicting allegations of family violence and alienating parental behaviour, and quite possibly mental health or substance abuse issues. Although it can be very challenging for the court to make a decision in such a case, testimony from neutral court-appointed professionals can often assist in making a decision that promotes a child's best interests. Simply ignoring claims of alienation will clearly harm children.

Responses to cases of children resisting contact with a parent need to be nuanced and individualized, depending on such factors as the nature of a case, the age of a child and the resources available. In many cases, favoured parents can be encouraged to support a child having a safe, positive relationship with the other parent, but this often requires some encouragement from a judge at a conference. If Bill C-223 were enacted, parents engaging in alienating behaviours would face no legal response, which would make successful, child-focused resolution out of court less likely.

There is clearly a need for more research into the value of different types of mental health legal interventions to respond to cases of children resisting contact with a parent. However, it is significant that in the only long-term follow-up research of Canadian cases involving judicial findings of alienation and custody reversal, we found that children who were strongly opposed to leaving the care of an alienating parent later came to appreciate why the court made the order that it did, and were doing well.

Although the stated wishes of children are important, and must always be known by the court, our society does not allow children to make the decision to remain with abusive or neglecting parents, and recent cases have held that alienating parental behaviour is a form of emotional abuse and family violence (see *Y.H.P. v. J.N.*, 2023 ONSC 5766).

Like many issues related to parenting disputes and the best interests of children, a determination that there has been parental alienation requires an often complex set of judicial factual findings specific to a case. Despite the challenges in determining whether there has been parental alienation, and if so, deciding how to respond, Canadian courts and family justice professionals have been justified in using the concept. Individual cases are often multilayered and complex, but a simplistic banning of the use of parental alienation by politicians will not advance resolutions that promote the best interests of children.

While Bill C-223 raises very significant concerns about responses to cases of parental alienation, there are some worthwhile provisions; for example, requiring lawyers to screen all cases for risk of family violence, and allowing for *in camera* judicial interviews of children. Increasing protection for victims of family violence and their children is a very important objective, but this proposed law will cause harm to children. The hard work of better addressing family violence requires education of professionals and resources for expert assessments, shelters, support services and better legal aid.

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